



County of Los Angeles CHIEF EXECUTIVE OFFICE

Kenneth Hahn Hall of Administration
500 West Temple Street, Room 713, Los Angeles, California 90012
(213) 974-1101
<http://ceo.lacounty.gov>

WILLIAM T FUJIOKA
Chief Executive Officer

July 29, 2008

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

**APPROVAL OF MEMORANDUM OF UNDERSTANDING BETWEEN
COUNTY OF LOS ANGELES AND LOS ANGELES COUNTY METROPOLITAN
TRANSPORTATION AUTHORITY, CONCERNING BODILY INJURY, PERSONAL
INJURY, OR PROPERTY DAMAGE DISPUTES, CLAIMS, OR LAWSUITS
(ALL DISTRICTS) (3 VOTES)**

SUBJECT

The County of Los Angeles (County) and the Los Angeles County Metropolitan Transportation Authority (MTA) desire to further their collaboration by executing a Memorandum of Understanding (MOU) to establish a resolution process for bodily injury, personal injury, or property damage claims or disputes arising between the two public entities, and a framework for facilitating the resolution of bodily injury, personal injury, or property damage claims filed by third parties against both public entities.

IT IS RECOMMENDED THAT YOUR BOARD:

Approve and instruct the Chair to sign the MOU by and between the County and MTA, effective August 1, 2008, establishing a resolution process for bodily injury, personal injury, or property damage claims or disputes arising between the two public entities.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The MOU was jointly developed by the County and MTA's risk management and legal staff.

"To Enrich Lives Through Effective And Caring Service"

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Intra-County Correspondence Sent Electronically Only***

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The MOU reduces the likelihood and necessity of the County and MTA filing claims and cross-claims against each other. Such actions increase administration, claim, and especially, legal expense. The County and MTA's risk managers and legal counsel agree it is in the best interest of the citizens of the County that the two public entities refrain from filing claims or cross-claims until matters have been discussed and potentially resolved with minimal expense.

Should a third party file a bodily injury, personal injury, or property damage claim against both public entities, the MOU provides a process for the County and MTA to expeditiously meet and address issues of alleged or potential liability.

The County or MTA may withdraw from the MOU by providing a 90-day written notice.

This recommended MOU allows additional Los Angeles area public entities to become a party to the MOU in the future.

Implementation of Strategic Plan Goals

Collaboration between County and MTA supports the County's Strategic Plan Goal #3: Organizational Effectiveness, and Goal #4: Fiscal Responsibility.

FISCAL IMPACT/FINANCING

Bodily injury, personal injury, or property damage claims involving more than one Los Angeles area public entity occur. For fiscal years 2002 through year-to-date 2008, 83 claims were filed involving the County and MTA, either by third parties against the County and MTA, or claims filed by the County and MTA against one another. Because of those claims, the County paid \$24,259 in damages and \$348,933 in legal expenses.

Additionally, the opportunity of additional cost avoidance exists by reducing the administrative expense incurred by County departments responding to such cross-claims or disputes.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The MOU has been approved as to form by County Counsel. County Counsel supports the adoption of this recommendation.

The Honorable Board of Supervisors
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IMPACT ON CURRENT SERVICES (OR PROJECTS)

Approval of the MOU is intended to facilitate or expedite resolution of third party bodily injury, personal injury, or property claims filed against more than one of the public entities executing the MOU. A more expeditious resolution of such claims could reduce the time required for County citizens' claims to be resolved.

CONCLUSION

Upon approval by your Board, please return two original, signed MOUs and an adopted copy of this letter to Rocky A. Armfield, Chief Executive Office, Risk Management Branch, for further processing.

Respectfully submitted,



WILLIAM T FUJIOKA
Chief Executive Officer

WTF:ES
RAA:sg

Attachments

c: County Counsel
Auditor-Controller
Greg Kildare, Los Angeles County Metropolitan Transportation Authority

**MEMORANDUM OF UNDERSTANDING
BY AND AMONG THE COUNTY OF LOS ANGELES,
LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY, AND
OTHER PUBLIC ENTITIES WITHIN LOS ANGELES COUNTY OPTING FOR INCLUSION**

This Memorandum of Understanding (MOU) is effective upon execution of at least two parties. Thereafter, it shall be effective as to any new party upon execution by that party. All entities executing this MOU are collectively referred to herein as the "Parties" and individually as a "Party."

Recitals

- A. In the past, the Parties have had claims or disputes with each other relating to bodily injury, personal injury, and property damage, and have been named as joint defendants in lawsuits brought by others.
- B. In the past, such claims or disputes sometimes led to lawsuits where the Parties filed complaints and/or cross-complaints against each other to protect their respective rights. These lawsuits have almost always been settled with the complaints/cross-complaints being dismissed. Nonetheless, such lawsuits consume an unnecessary amount of time, increase litigation costs and operating expenses, and complicate other existing claims or lawsuits.
- C. The Parties now desire to avoid to the fullest extent possible, the future filing of complaints or cross-complaints against each other in bodily injury, personal injury, and property damage disputes.
- D. The Parties enter into this MOU to set forth the terms of how they will handle such disputes among the Parties in the future.

Agreement

- 1. No Party will file either a complaint or cross-complaint against another Party in any dispute related to bodily injury, personal injury, or property damage, when the reasonable value of the amount in dispute does not exceed \$50,000.
- 2. With regard to claims and disputes between Parties, related to bodily injury, personal injury, or property damage, where the reasonable value of the amount in dispute exceeds \$50,000, the Party claiming injury will notify the other Party of the claim and the affected Parties will meet and engage in good faith negotiations in an attempt to reach a reasonable settlement of the dispute. No Party to any such dispute will file a complaint or cross-complaint against another Party until the Parties have met in good faith and have attempted to reach a settlement, but have been unsuccessful.

Agreement (continued)

3. For any claim or dispute related to bodily injury, personal injury, or property damage, when the reasonable value of the amount in dispute does not exceed \$50,000, as described in Paragraph 1, above, if the Parties cannot reach an agreement on a good faith settlement after discussion between the Parties, the Parties will mediate the dispute, and, if mediation is unsuccessful, will appoint a person acceptable to both Parties to arbitrate the dispute to a final resolution. Each Party will share equally the arbitration expenses, be bound by the arbitration award, and will not seek further review. The Parties to a dispute described in Paragraph 2, above, may also mediate and/or arbitrate that dispute if both Parties agree to do so, but nothing herein obligates the Parties to mediate and/or arbitrate such disputes.
4. Nothing in this MOU shall affect any Party's obligation to comply with the claims filing provisions of the California Tort Claims Act (Government Code" 900 *et seq.*), or any other substantive or procedural provision of law related to bodily injury, personal injury, or property damage disputes, except that from the time a Party gives notice to another Party of the existence of a dispute described in Paragraph 2, above, and until such time as either Party notifies the other Party that the dispute resolution process described in Paragraph 2 has been completed, the time set forth by law for the filing of a claim, or for the initiation of litigation shall be tolled.
5. While the provisions of paragraphs 1 through 4, above, are intended as applying primarily to disputes among two or more Parties, the Parties agree to use similar alternate disputes resolution procedures to limit the issues in cases involving bodily injury, personal injury, or property damage where two or more Parties are named as defendants in a lawsuit brought by a person who is not a Party. To the extent feasible given the particular facts of any such lawsuit, the Parties who are named as defendants will use the dispute resolution methods described in paragraphs 2 and 3 to attempt to establish, as early as possible in the litigation, how any liability found against the defendant Parties shall be apportioned between said Parties. If the Parties are able to reach an agreement of the allocation of liability, if feasible under the circumstances, the Parties will execute a joint defense agreement, retain a single counsel to defend them, jointly fund the defense of the case based upon the liability allocation agreed to, and satisfy any final judgment against said Parties in proportion to the agreed upon liability allocation.
6. Any Party may withdraw from this MOU and terminate its rights and obligations under this MOU on ninety (90) days prior written notice to all other Parties. If any such notice is ever given, this MOU will remain in place among all Parties not given such notice.

Agreement (continued)

- 7. Any notice, authorization, or request, which any Party is required or may desire to give to any other Party, shall be in writing and shall be personally delivered or sent by United States mail, return receipt requested, with postage prepaid and addressed to the person designated as the Risk Manager of the receiving entity. Any Party, upon executing this MOU, will exchange with all other Parties the names and addresses of each Party's designated Risk Manager.
- 8. No Party shall assign or transfer any of that Party's rights or obligations under this MOU to any other person or entity. Any attempt to assign or transfer rights or obligations in violation of this Paragraph by any Party shall constitute grounds for the immediate termination of this MOU by any other Party; in that Party's sole discretion.
- 9. The validity, interpretation, construction, and performance of this MOU shall be governed by the laws of the State of California.
- 10. This MOU contains the entire understanding and agreement among the Parties respecting the subject matter hereof and all prior agreements and understandings of the Parties, whether oral or written, are superseded in their entirety.
- 11. This MOU may not be supplemented, modified, or amended, except by an instrument in writing signed by each Party's duly authorized representative.
- 12. No failure by any Party to insist upon the strict performance of any term hereof or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach or of any such term. Any waiver by a Party or any default or breach hereunder shall not constitute a waive of any subsequent default or breach of the same or a different kind.

IN WITNESS WHEREOF, the Parties hereto have duly executed this MOU as of the dates set forth next to each Party's execution.

Party: LACMTA
 By: [Signature]
 Name: ERIC KILGORE
 Title: EO, RISK MGT
 Date: 7/29/08

APPROVED AS TO FORM:
RAYMOND G. FORTNER, JR.
COUNTY COUNSEL

By: [Signature]
 Assistant County Counsel

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IN WITNESS WHEREOF (continued)

Party: COUNTY OF LOS ANGELES

By: *Yvonne B. Burke*

Name: YVONNE B. BURKE

Title: CHAIR, BOARD OF SUPERVISORS

Date: JUL 29 2008



ATTEST: SACHIA A. HAMAI
EXECUTIVE OFFICER
CLERK OF THE BOARD OF SUPERVISORS

By: *Sachia A. Hamai*, Deputy

Party: _____

By: _____

Name: _____

Title: _____

Date: _____

Party: _____

By: _____

Name: _____

Title: _____

Date: _____